



MAYOR AND COUNCIL AGENDA

NO. 5

DEPT.: Community Planning and Development Services DATE PREPARED: 3/14/05
STAFF CONTACT: Arthur D. Chambers, AICP, Director FOR MEETING OF: 3/14/05

SUBJECT: Approval of contract for sale (Parking Purchasing Agreements) for approximately 722 parking spaces in Block 1/2, Block 4 and Block 5 with RTS Residential Block 1/2, LLC; RTS Residential Block 4, LLC; and RTS Residential Block 5, LLC, respectively.

RECOMMENDATION: Approve the three contracts of sale for parking in the amount of \$22,560 per space and authorize the City Manager to sign the agreements in a form acceptable to the City Attorney.

DISCUSSION: The Amended and Restated GDA that was approved by the Mayor and Council in September 2003 provided for the sale of parking spaces by the City of Rockville to the residential developer in Block 5. In that same document and the GDA for Block 4 there were provisions to rent parking spaces to the residential developer for the rental apartments in Blocks 1/2 and 4. Since that time the residential developer has decided to develop all condominium units and no rental units. As a result, the Amended and Restated GDA, and the Block 4 GDA are being amended to reflect the need for parking purchase agreements for Blocks 1/2, 4, and 5. The attached contracts for sale (parking purchase agreements) are the result of those amendments.

It should be noted that the residential developer is commonly referred to as RD Rockville, LLC. For financing reasons RD Rockville, LLC is creating separate entities for each Block; RTS Residential Block 1/2; RTS Residential Block 4, LLC; RTS Residential Block 5, LLC; and RTS Residential Block 3B, LLC. The parking agreements will be with the first three entities. Block 3B will be responsible for building their own parking spaces.

The agreements set forth the cost per space at \$22,500. The actual number of spaces will be determined when the garages are striped. Currently it is estimated that there will be 722 spaces sold to the residential developer. By block the number of spaces are Block 1/2, 324 spaces; Block 4, 144 spaces plus 100 spaces for Block 5; and Block 5, 154 spaces. That is a total estimated sales price of \$16,288,320. In addition the residential developer is contributing \$4,259,000 to the parking district for a total of \$20,547,320. The purchase of the parking spaces at \$22,560 instead of leasing the spaces at \$900 per year per space will mean the city will not have to finance or bond as much for the parking garage as originally estimated. In addition, the maintenance and operating cost of the spaces will be the responsibility of the residential units not the City's parking district.

As with all purchase agreements the attached agreements set forth compensation, schedule,

warranties, retainage etc. The residential developer will be making monthly payments based upon the percentage of completion of each garage. For example if the Block 5 garage is estimated to be 15% completed the residential developer would owe an estimated \$521,136(154 spaces x \$22,560 x15%). There would be some retainage (not to exceed 10%) of the monthly payment, which would be paid to the city when the garage is complete.

Fiscal Impact: Approval of this agreement will reduce the total amount of bonds that will need to be sold. Additionally it will eliminate some operating and maintenance costs.

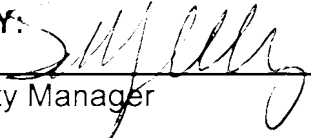
PREPARED BY:



Arthur D. Chambers, AICP, Director

3/8/05
Date 3/1/2005

APPROVED BY:



Scott Ullery, City Manager

3/10/05
Date

LIST OF ATTACHMENTS:

1. Contract for sale Block 1/2
 2. Contract for sale Block 4
 3. Contract for sale Block 5
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CONTRACT OF SALE

(Block 5 Purchased Parking Spaces,
Rockville Town Square, City of Rockville, Maryland)

THIS CONTRACT OF SALE (this "**Contract**") is made as of March ____, 2005 (the "**Effective Date**"), by and between (i) **RTS RESIDENTIAL BLOCK 5, LLC**, a Delaware limited liability company ("**RTS Block 5**"); and (ii) **THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND**, a municipal corporation of the State of Maryland (the "**City**").

WITNESSETH:

RECITALS:

A. The City, Federal Realty Investment Trust, a Maryland Real Estate Investment Trust ("**FRIT**"), and RD Rockville, LLC, a Maryland limited liability company ("**RD Rockville**"), previously entered into that certain Amended and Restated General Development Agreement for the Redevelopment of the Rockville Town Square (Blocks 1/2, 3B and 5), dated June 14, 2004 (as amended and assigned to date, the "**Restated GDA**").

B. Pursuant to the Restated GDA, RD Rockville, the City and FRIT have each undertaken certain obligations relative to development within the City of a mixed-use commercial and residential project including public improvements that is known as the "Rockville Town Square" (the "**RTS Project**"). The RTS Project is described in detail in the GDA and contemplates that the RTS Project will contain separate development blocks that are described in the GDA as "Block 1/2," "Block 3B," "Block 5" and "Block 4" (collectively, the "**Development Blocks**").

C. RTS Block 5 is the successor to RD Rockville as to its rights and obligations under the Restated GDA relative to Block 5 pursuant to certain assignment instruments between (i) RD Rockville and RTS-RD Rockville, LLC, a Delaware limited liability company (formerly known as "Windsor-RD Rockville, LLC") ("**RTS-RD Rockville**"), and (ii) RTS-RD Rockville and RTS Block 5 at the time of the "**Phase I Closing**" (as defined in the Restated GDA) under the Restated GDA, which was consummated on June 14, 2004.

D. The parties to the GDA are this date proceeding to consummate the "Phase II Closing" under and as defined in the Restated GDA and in connection therewith, among other things, (i) RTS Block 5 has established on Block 5 a "**Project Condominium Regime**" (as defined in the Restated GDA), pursuant to which, Block 5 is comprised of a "**Residential Co-Developer Condominium Unit**," a "**Retail Condominium Unit**" and a "**Public Parking Garage Condominium Unit**" (as such terms are defined in the Restated GDA); and (ii) RTS Block 5 has conveyed to the City fee simple title to the Public Parking Garage Condominium Unit located within Block 5.

E. Pursuant to the terms of the Restated GDA, the City has agreed to sell and RTS Block 5 has agreed to purchase approximately one hundred fifty four (154) parking spaces (the “**Block 5 Purchased Parking Spaces**”) to be located within the “**Block 5 Garage**” (as defined in the Restated GDA) that the City is obligated to construct within the Public Parking Garage Condominium Unit in conformity with the terms of the Restated GDA. Attached hereto as Exhibit A and incorporated herein by this reference is a plat generally showing the anticipated location of the Block 5 Purchased Parking Spaces within the Block 5 Garage (the “**Block 5 Purchased Parking Spaces Plat**”).

F. The City and RD Rockville Garage, LLC, a Maryland limited liability company (“**RD Rockville Garage**”), have entered into that certain Standard Form of Agreement between Owner and Design/Builder (Part 2), dated March __, 2005 (together with all documents and agreements referenced therein the “**Garage Construction Contract**”) pursuant to which RD Rockville Garage shall serve as the “Design/Builder” in connection with the construction of, among other things, the Block 5 Garage.

G. The parties hereto desire to set forth in this Contract the terms and conditions governing the purchase and sale of the Block 5 Purchased Parking Spaces.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RTS Block 5 and the City hereby agree as follows:

1. **Definition of Block 5 Purchased Parking Spaces; Project Condominium Regime.**

a. Definition of Block 5 Purchased Parking Spaces. The “**Block 5 Purchased Parking Spaces**” consist of the following rights and interests: (a) the real property comprising the actual number of Block 5 Purchased Parking Spaces that are constructed by the City as a part of the Block 5 Garage within the Public Parking Garage Condominium Unit that are intended for use by the Residential Condominium Unit, which number of Block 5 Purchased Parking Spaces shall be finally agreed upon by the City and RTS Block 5 at the time that the same are actually striped and delineated within the Block 5 Garage and which Block 5 Purchased Parking Spaces shall be in the approximate location shown on the Block 5 Purchased Parking Spaces Plat, as well as any improvements thereon (including, without limitation, signage and access control equipment installed or located thereon); (b) all rights, interests, easements and benefits in any way benefiting and/or appertaining thereto; (c) any condemnation proceeds then payable with respect to any portion of the Block 5 Purchased Parking Spaces or any improvements thereon; and (d) all of the City’s right, title and interest in and to any drawings, plans, specifications, surveys, studies, warranties, manuals and contracts relating to said real property and improvements, to the extent assignable.

b. Project Condominium Regime. The City and RTS Block 5 expressly acknowledge and agree that at the Phase II Closing under the Restated GDA, the Project Condominium Regime will be established on Block 5 in such manner as to include fee simple title in and to all of the Block 5 Purchased Parking Spaces within the boundaries of the Residential Co-Developer Condominium Unit. Consequently, and since RTS Block 5 is currently in title to Block 5 and will be the “declarant” under the applicable “**Condominium Documents**” (as defined in the Restated GDA) pursuant to which the Project Condominium Regime will be established on Block 5, no conveyance by deed or otherwise of the Block 5 Purchased Parking Spaces by the City to RTS Block 5 shall be required pursuant to this Contract or in connection with RTS Block 5’s purchase of the Block 5 Purchased Parking Spaces from the City.

2. Agreement to Sell and to Purchase; Purchase Price; Payment of Purchase Price.

a. Agreement to Sell and Purchase. The City agrees to sell and RTS Block 5 agrees to purchase the Block 5 Purchased Parking Spaces on the terms and conditions hereinafter provided.

b. Purchase Price. The purchase price for the Block 5 Purchased Parking Spaces shall be an amount equal to the product of (i) Twenty-Two Thousand Five Hundred Sixty and No/100 Dollars (\$22,560.00); multiplied by (ii) the total actual number (as determined in conformity with Section 1(a)) of Block 5 Purchased Parking Spaces (the “**Purchase Price**”). To illustrate the operation of the calculation of the Purchase Price, assume that the total actual number of Block 5 Purchased Parking Spaces is one hundred fifty-four (154). Based on this assumption, the Purchase Price would be an amount equal to Three Million Four Hundred Seventy-Four Thousand Two Hundred Forty and No/100 Dollars (\$3,474,240.00). The Purchase Price shall be payable as provided in this Section 2.

c. Payment of Purchase Price. The Purchase Price shall be payable by RTS Block 5 to the City in accordance with the payment schedule that is attached hereto as Exhibit B and incorporated herein by this reference (the “**Payment Schedule**”), subject to and in accordance with the following terms and provisions:

(1) The City and RTS Block 5 acknowledge that the Payment Schedule has been established based on the anticipated schedule for the “**Substantial Completion**” (as defined in Section 3(h)) of the Block 5 Purchased Parking Spaces and reflects the applicable “**Retainage**” (as defined in Section 3(i)). If, for any reason, the progress of the construction of the Block 5 Purchased Parking Spaces is delayed for more than thirty (30) days, the City and RTS Block 5 agree to adjust the Payment Schedule to address such delay.

(2) At least _____ (_____) days prior to each payment date specified on the Payment Schedule, the City shall provide to RTS Block 5 the following documents and materials (collectively, the “**Payment Documentation**”) : (a) copies of duly executed partial

lien waivers from the general contractor and each subcontractor, material supplier, and any other person or entity entitled to file a mechanic's lien on the Block 5 Purchased Parking Spaces (collectively, the "**Contractors**") covering the progress payments of the Purchase Price previously paid by RTS Block 5 to the City pursuant to the Payment Schedule; and (b) an original duly executed certificate of partial completion from Weihe Design Group, PLLC or any successor thereto reasonably approved by RTS Block 5 (the "**Project Architect**") in favor of RTS Block 5 confirming the percentage of the Block 5 Purchased Parking Spaces that has in fact been Substantially Completed as of the date of such certificate.

(3) RTS Block 5 shall pay to the City by means of wire transfer of immediately payable federal funds to an account designated by the City the applicable portion of the Purchase Price based upon the Payment Schedule; provided that the City has timely delivered to RTS Block 5 the required Payment Documentation. If RTS Block 5 shall reasonably and in good faith dispute all or any part of any payment of the Purchase Price that is due pursuant to the Payment Schedule, RTS Block 5 shall remit to the City in accordance with the Payment Schedule, the applicable portion of the Purchase Price payment then due that is not in dispute.

(4) The City and RTS Block 5 acknowledge that RTS Block 5 shall not be obligated to pay to the City for the Retainage that is reflected in the Payment Schedule until after **Final Completion**" (as defined in Section 3(h)) of all of the Block 5 Purchased Parking Spaces. At least _____ (____) days prior to the payment date for any portion of the Retainage pursuant to the Payment Schedule, the City shall provide to RTS Block 5 (a) an original certificate of final completion duly executed by the Project Architect in favor of RTS Block 5 certifying the Final Completion of all of the Block 5 Purchased Parking Spaces; (b) copies of all necessary governmental permits and approvals for the use and occupancy of the Block 5 Purchased Parking Spaces, including, without limitation, the "**Occupancy Permit**" (as defined in Section 3(d)) for all of the Block 5 Purchased Parking Spaces; (c) copies of duly executed final lien waivers for the Block 5 Purchased Parking Spaces from the Contractors; and (d) a duly executed certification from the City certifying that all costs of construction and Final Completion of the Block 5 Purchased Parking Spaces have been or will be paid in full out of such Retainage. Subject to the terms of Section 6 and provided that the City has complied with this Section 2(c)(4), RTS Block 5 shall pay the Retainage required by the Payment Schedule to the City by means of wire transfer of immediately payable federal funds to an account designated by the City. If RTS Block 5 shall reasonably and in good faith dispute all or any part of the Retainage, RTS Block 5 shall remit to the City in accordance with the Payment Schedule, the applicable portion of the Retainage the due that is not in dispute.

3. Construction and Final Completion of Block 5 Purchased Parking Spaces; Signage and Access Control Equipment.

a. The City covenants, agrees and warrants that the City shall cause the Block 5 Purchased Parking Spaces to be constructed (the "**Work**") and shall achieve Final Completion (which shall expressly include the striping of the Block 5 Purchased Parking Spaces) of

the Work (i) in accordance with the “**Drawings and Specifications**” (as defined in Section 3(h)) therefor that have been approved by RTS Block 5, (ii) in good and workmanlike manner with materials specified in the Drawings and Specifications or otherwise permitted by the Garage Construction Contract and free from defects not inherent in the quality required or permitted by the Garage Construction Contract; (iii) in accordance with the requirements of the “**Contract Documents**” (as defined in the Garage Construction Contract); and (iv) subject to “**Force Majeure**” (as defined in the Restated GDA), in conformity with the “**Project Development Schedule**” (as defined in the Restated GDA). The term “Work” as defined above and used in this Contract shall be deemed to mean and include all components of the term “**Work**” as defined in the Garage Construction Contract, to the extent relating to or affecting the Block 5 Purchased Parking Spaces. The City and RTS Block 5 acknowledge that the approval by RD Rockville Garage of the Drawings and Specifications pursuant to the Garage Construction Contract shall be deemed to be the approval by RTS Block 5 of the Drawings and Specifications. The City shall promptly and diligently cause Work not conforming to the requirements specified in this Section 3(a) to be corrected in accordance with Article 9 and any other applicable provisions of the Garage Construction Contract. The City’s obligations under this Section 3(a) excludes remedy for damage or defect caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

In addition to the City’s obligations under Section 3(a), all warranties and guaranties given by RD Rockville Garage to or in favor of the City pursuant to the terms of the Garage Construction Contract to the extent relating to or affecting the Block 5 Purchased Parking Spaces are incorporated herein by reference to the same extent as if set forth herein in full and the City shall be deemed to have made and given all of such warranties and guaranties to and in favor of RTS Block 5. If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the City and RD Rockville Garage, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, to the extent permitted by the terms of the Garage Construction Contract or any such other applicable agreement or special warranty, the City shall, promptly and diligently cause RD Rockville Garage to correct such defect in accordance with the terms of the Garage Construction Contract. Furthermore, if during the guarantee or warranty period specified in the Garage Construction Contract, any material, equipment or system requires corrective work because of defects in materials or workmanship, to the extent such defects in materials or workmanship are covered by the guarantee or warranty specified in the Garage Construction Contract, the City shall promptly and diligently exercise all rights and remedies that may be available to the City under the terms of the Garage Construction Contract for or in connection with such defects. Notwithstanding anything to the contrary set forth in this Contract, the City’s obligations set forth in Section 3(a) and this Section 3(b) shall survive and remain in full force and effect for so long as any guaranties, warranties, covenants or agreements of RD Rockville Garage shall survive and remain in force or effect under the Garage Construction Contract. The remedies set forth in this Section 3(b) shall be RTS Block 5’s sole remedies against the City if any of the Work is found to be not in accordance with the requirements of the Contract Documents or any material, equipment or system requires

corrective work because of defects in materials or workmanship, except in the event that the City, by its actions or omissions has caused any of the warranties or similar rights in favor of the City pursuant to the Garage Construction Contract to be void or otherwise unavailable.

b. Upon reasonable prior notice to the City (which may be telephonic), and if requested by the City, when accompanied by a City representative, RTS Block 5 and its agents and lenders shall have the right to inspect the Block 5 Purchased Parking Spaces during the progress of completion of the same; provided that, RTS Block 5 and its agents and lender shall not impede or interfere with the construction activities within the Block 5 Garage. RTS Block 5 and its agents and lenders shall assume all risks associated with any such inspection and shall defend (with counsel reasonably acceptable to the City), indemnify and hold harmless the City from and against any losses, damages, or claims suffered or incurred by the City arising from any negligence or intentional misconduct engaged in by RTS Block 5 or its agents or lenders during the course of any such inspection. At all times during any such inspection, RTS Block 5 shall maintain liability insurance in conformity with the requirements of Section 12 of the Restated GDA.

c. Except for the payment by RTS Block 5 to the City of the Purchase Price in conformity with the terms of this Contract, the City agrees that pursuant to the terms and conditions of the Garage Construction Contract, the construction and Final Completion of the Block 5 Purchased Parking Spaces shall be performed by or on behalf of the City at the City's sole cost and expense, including, but not limited to, all costs associated with the design, construction and permitting incurred in connection with the preparation of the Plans and Specifications and the Final Completion of the Block 5 Purchased Parking Spaces.

d. Each time that the City remits payment to any of the Contractors for the Block 5 Purchased Parking Spaces, the City shall obtain a lien waiver from such Contractors in respect of the portion of the construction work for the Block 5 Purchased Parking Spaces as to which such payment applies.

e. Prior to the Substantial Completion of the Block 5 Purchased Parking Spaces, the City shall, at its expense, apply for a permit from the applicable governmental authorities to occupy and use the Block 5 Purchased Parking Spaces as standard size vehicular parking spaces as determined under Applicable Laws (the "**Occupancy Permit**") and the City shall use commercially reasonable efforts to obtain final approval of its application and issuance of the Occupancy Permit as soon as reasonably possible. The City will send a copy of the Occupancy Permit to RTS Block 5 within ten (10) days after the City receives it.

f. Upon the Final Completion of the Work, and as a condition precedent to RTS Block 5's payment of the "**Remaining Retainage**" (as defined in Section 3(i)) to the City, the City shall provide to RTS Block 5 a copy of the "General Warranty" to be given by RD Rockville Garage pursuant to Subparagraph 3.2.9 of the Garage Construction Contract (the "**General Warranty**").

g. The terms (i) "**Substantial Completion;**" (ii) "**Final Completion;**" and (iii) "**Drawings and Specifications,**" as used in this Contract, shall have the same meanings given to such terms in the Garage Construction Contract.

h. The term "**Retainage,**" as used in this Contract, shall mean an amount equal to ten percent (10%) of the amount due until the construction of the Block 5 Purchased Parking Spaces is Substantially Complete; provided that, at the time of Substantial Completion of the construction of the Block 5 Purchased Parking Spaces, RTS Block 5 shall continue to retain 2.5% of the amount due or 200% of the reasonable cost to correct or complete incorrect or incomplete work for the Block 5 Purchased Parking Spaces, whichever amount leaves a greater amount withheld by RTS Block 5 (the "**Remaining Retainage**"). "Reasonable cost" as used in the previous sentence shall be determined in conformity with the terms of the Garage Construction Contract. The Retainage has been incorporated into the Payment Schedule attached hereto as Exhibit B.

i. The term "**Applicable Law,**" as used in this Contract, shall mean any federal, state or local law or regulation, or financing covenants to be complied with by the City for City financing for the Block 5 Garage, applicable to the Block 5 Purchased Parking Spaces, the City, RTS Block 5 or this Contract and expressly includes (i) orders of court or administrative agencies having jurisdiction over any over the City, RTS Block 5, this Contract or the Block 5 Purchased Parking Spaces; and (ii) all applicable federal, state or local environmental laws, rules and regulations relating to contamination.

j. The City acknowledges that in connection with the construction of the Block 5 Purchased Parking Spaces, RTS Block 5 shall have the right, at its own cost and expense, to cause to be installed certain signage (including directional signage, if any) and access control equipment for the Block 5 Purchased Parking Spaces (collectively, the "**Signage and Access Control Equipment**") as set forth in the plans and specifications for the same. RTS Block 5 shall have the right to cause the Signage and Access Control Equipment to be so installed at such times during the progress of the construction of the Block 5 Purchased Parking Spaces as it is reasonably appropriate for the installation of the same in accordance with prevailing industry standards.

4. City Representations and Warranties; Changes in Representations and Warranties; City Covenants Concerning Title.

a. City Representations and Warranties. The City makes the following representations and warranties to RTS Block 5 with respect to the Public Parking Garage Condominium Unit located within Block 5 and the Block 5 Purchased Parking Spaces, as applicable, each of which shall be true and correct on the Effective Date and throughout the term of this Contract, including, but not limited to, on the date that the City submits each invoice to RTS Block 5 for payment of the Purchase Price or the Retainage, as applicable, pursuant to this Contract:

(1) The City is currently the owner or will be the owner after the consummation of the Phase II Closing under the Restated GDA of fee simple title in and to the Public Parking Garage Condominium Unit located within Block 5 and is the only party having any property interest in the Public Parking Garage Condominium Unit (other than RTS Block 5 pursuant to the terms of the Restated GDA and this Contract).

(2) The Garage Construction Contract is in full force and effect and the City has no actual knowledge of any default thereunder by the City or RD Rockville Garage. To the City's actual knowledge, the Garage Construction Contract is binding and enforceable against the City and RD Rockville Garage.

(3) The City now has, and at all times while this Contract is in effect will have, full power and authority to enter into, undertake and perform the terms of this Contract. The execution and delivery of this Contract by the City are and will be legally binding on and enforceable by the RTS Block 5 against the City in accordance with the terms set forth herein. This Contract does not violate the terms of any other contract, agreement, undertaking, law, order, regulation or instrument to which the City is a party or by which the City is bound.

(4) Neither the whole nor any portion of the Public Parking Garage Condominium Unit has been condemned or otherwise taken by any public authority in the exercise of its power of eminent domain or by private purchase in lieu thereof (a "**taking**"), and the City has no actual knowledge of and has received no written notice that any such taking is pending or threatened. The City shall promptly inform RTS Block 5 of any notice or proceeding with respect to a taking. The provisions of Section 6(a)(10) of this Contract shall apply in the event a taking occurs or is pending or threatened.

(5) There is no pending litigation (to which the City is a party) affecting all or any portion of the Public Parking Garage Condominium Unit or otherwise affecting the City that could have a material adverse impact on the ability of the City to perform its obligations under this Contract and the City has received no written notice of the threat of any such litigation.

(6) To the City's actual knowledge, there are no tenants or occupants of any portion of the Public Parking Garage Condominium Unit. No party which has, by agreement, operation of law or otherwise, been granted by the City any action or right of first refusal to purchase all or any portion of the Block 5 Purchased Parking Spaces (other than as set forth in the Restated GDA or this Contract). The City has not entered, and will not enter, into any agreement for the sale, transfer or sharing of development rights affecting any portion of the Block 5 Purchased Parking Spaces.

(7) Subject to the satisfaction of all terms and conditions of this Contract, the City has the financial ability to perform its obligations under this Contract in conformity with the terms and conditions of this Contract. The City has no actual knowledge of any

City liabilities, direct or indirect, fixed or contingent, matured or unmatured that would materially and adversely affect the City's ability to perform its obligations under this Contract in conformity with the terms and conditions of this Contract.

b. Changes in Representations and Warranties; Suit Deadline.

(1) RTS Block 5 shall be entitled to rely upon the warranties and representations set forth in this Section 4 and the same shall survive the delivery of the Occupancy Permit by the City to RTS Block 5 for a period of one hundred eighty (180) days (the "**Survival Period**"). From and after the Effective Date and until the City's delivery to RTS Block 5 of the Occupancy Permit, the City shall promptly notify RTS Block 5 in writing of any events or circumstances, of which the City has actual knowledge that have occurred from and after the Effective Date hereof or that were unknown to City as of the Effective Date but that have since come within the actual knowledge of the City, which events or circumstances make any of the foregoing representations and warranties untrue, incomplete or inaccurate in any material way. If RTS Block 5 elects not to accept the modified representation or warranty (as such representation and warranty may have been modified by the City's written notice to RTS Block 5 after the Effective Date hereof), then the City and RTS Block 5 will use commercially reasonable good faith efforts to mutually agree upon the manner in which they shall thereafter proceed under this Contract. If RTS Block 5 fails to object to such modified representation or warranty within ten (10) business days after the City notifies RTS Block 5 of the same in writing, RTS Block 5 shall be deemed to have irrevocably and unconditionally waived such modified representation and warranty and the City shall have no liability with respect to such modified representation or warranty, notwithstanding any contrary provision, covenant, representation or warranty contained in this Contract or in any documents executed pursuant hereto or in connection herewith.

(2) Any action, suit, or proceeding brought by RTS Block 5 against the City under this Contract shall be commenced and served, if at all, on or before the date that is sixty (60) days after the expiration of the Survival Period ("**Suit Deadline**") and, if not commenced and served on or before the Suit Deadline, thereafter shall be void and of no force or effect. City acknowledges and agrees that the resolution of such action, suit, or proceeding may not occur until after the expiration of the Survival Period and the Survival Period shall be deemed to be tolled with respect to any alleged breach or failure of a representation or warranty of which the City receives a notice of breach prior to the expiration of the Survival Period, provided RTS Block 5 files an action, suit, or proceeding with respect thereto before the Suit Deadline.

(3) References to "**the City's actual knowledge**," "**actual knowledge**," and such other similar phrases shall refer only to the current actual knowledge of the "City Designated Representative" (as hereinafter defined), and shall not be construed, by imputation or otherwise, to refer to the knowledge of the City or any affiliate of the City, or to any other partner, official, officer, agent, manager, representative or employee of the City or any affiliate thereof. As used herein, the term "**City Designated Representative**" shall refer to Arthur D. Chambers. The City Designated Representative shall have no personal liability in any manner

whatsoever hereunder or otherwise related to the transactions contemplated hereby.

c. City Covenants Concerning Title.

(1) After the Effective Date and prior to the Substantial Completion of the Block 5 Garage, the City shall not (i) option, sell, grant any right of first offer or first refusal, or otherwise encumber the Public Parking Garage Condominium Unit (in any manner or respect that affects the Block 5 Purchased Parking Spaces) or the Block 5 Purchased Parking Spaces; or (ii) except as may be contemplated under the Restated GDA, execute any easements, covenants, conditions, or restrictions with respect to the Public Parking Garage Condominium Unit (in any manner or respect that affects the Block 5 Purchased Parking Spaces) or the Block 5 Purchased Parking Spaces, otherwise alter or permit the alteration of legal or beneficial title to the Public Parking Garage Condominium Unit (in any manner or respect that affects the Block 5 Purchased Parking Spaces) or the Block 5 Purchased Parking Spaces, or seek any zoning or other land use changes or other governmental approvals with respect to the Public Parking Garage Condominium Unit (in any manner or respect that materially and adversely affects the Block 5 Purchased Parking Spaces) or the Block 5 Purchased Parking Spaces), without RTS Block 5's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing provisions of this Section 4(c)(1), the City may obtain financing for the Public Parking Garage Unit and execute documentation required for or in connection therewith, provided that, neither such financing nor any documentation required for or in connection therewith shall bind or affect in any manner or respect the Block 5 Purchased Parking Spaces or any right, title or interest of RTS Block 5 or its successors or assigns in or to any of the Block 5 Purchased Parking Spaces, including, but not limited to, the rights of RTS Block 5 or its successors or assigns to access, occupy, use, sell, license or lease any of the Block 5 Purchased Parking Spaces.

(2) The City shall be required to discharge any and all liens (including all mechanic's liens) and monetary encumbrances from the Block 5 Purchased Parking Spaces at its sole cost and expense and to release the Block 5 Purchased Parking Spaces from any other defects in or matters of title consented to, created, permitted or joined in by the City in violation of the terms hereof within thirty (30) days after the same are imposed upon the Block 5 Purchased Parking Spaces

5. RTS Block 5's Representations and Warranties. RTS Block 5 makes the following representations and warranties to the City, each of which shall be true and correct as of the Effective Date and throughout the term of this Contract:

a. The execution and delivery of this Contract by RTS Block 5 and the consummation of the transactions contemplated hereby will not result in the breach of any terms or conditions of, or constitute a default under any contract, agreement, commitment, indenture, mortgage, note, bond, license or other instrument or obligation to which RTS Block 5 is now a party or by which the RTS Block 5 may be bound or affected.

b. RTS Block 5 has taken all actions and steps necessary to permit its execution hereof and its performance of its obligations hereunder.

c. This Contract is legally binding upon and enforceable against RTS Block 5 in accordance with its terms. RTS Block 5 is currently the owner of fee simple title in and to the Block 5 Purchased Parking Spaces and is the only party having any property interest in the Block 5 Purchased Parking Spaces (other than the City pursuant to the terms of the Restated GDA and this Contract and the lender providing financing to RTS Block 5 in connection with the RTS Project).

d. There is no pending litigation (to which RTS Block 5 is a party) affecting all or any portion of the Block 5 Purchased Parking Spaces or otherwise affecting RTS Block 5 that could have a material adverse impact on the ability of RTS Block 5 to perform its obligations under this Contract and RTS Block 5 has received no written notice of the threat of any such litigation.

e. Subject to the satisfaction of all terms and conditions of this Contract, RTS Block 5 has the financial ability to perform its obligations under this Contract in conformity with the terms and conditions of this Contract. RTS Block 5 has no actual knowledge of any RTS Block 5 liabilities, direct or indirect, fixed or contingent, matured or unmatured that would materially and adversely affect RTS Block 5's ability to perform its obligations under this Contract in conformity with the terms and conditions of this Contract.

References to "**RTS Block 5's actual knowledge**," "**actual knowledge**," and such other similar phrases shall refer only to the current actual knowledge of the RTS Block 5 Designated Representative (as hereinafter defined), and shall not be construed, by imputation or otherwise, to refer to the knowledge of RTS Block 5 or any affiliate of RTS Block 5, or to any other partner, member, shareholder, official, officer, agent, manager, representative or employee of RTS Block 5 or any affiliate thereof. As used herein, the term "**RTS Block 5 Designated Representative**" shall refer to Scott J. Ross. The RTS Block 5 Designated Representative shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

6. Conditions Precedent to Payment of Retainage; Failed Conditions.

a. Conditions Precedent to Payment of Retainage. The following conditions shall exist at the time that RTS Block 5 is obligated to pay the Remaining Retainage to the City (the "**Remaining Retainage Payment Date**"), and the obligation of RTS Block 5 to pay the Remaining Retainage to the City pursuant to this Contract on the Remaining Retainage Payment Date shall be expressly conditioned upon and subject to the satisfaction (or written waiver by RTS Block 5) of each of such conditions with respect to the all of the Block 5 Purchased Parking Spaces, the Public Parking Garage Condominium Unit, and/or the City, as applicable:

(1) The City shall have achieved Final Completion of all of the Block 5 Purchased Parking Spaces in accordance with the Drawings and Specifications and all Applicable Laws, and the City shall have fully paid all costs and expenses of Final Completion of the Block 5 Purchased Parking Spaces.

(2) The City shall have obtained and delivered to RTS Block 5 all licenses, permits and approvals, including, but not limited to the Occupancy Permit, as may be required for RTS Block 5 to occupy and use the Block 5 Purchased Parking Spaces as standard size vehicular parking spaces in accordance with Applicable Laws.

(3) The City shall have delivered to RTS Block 5 a copy of the General Warranty from RD Rockville Garage.

(4) There shall be no mechanic's or materialmen's liens against any portion of the Public Parking Garage Condominium Unit (that affects in any manner or respect the Block 5 Purchased Parking Spaces) or the Block 5 Purchased Parking Spaces that has been created or permitted by, through or under the City (expressly including mechanic's or materialmen's liens arising from or in connection with the construction of all or any portion of the Block 5 Garage) and the City shall have obtained final lien waivers from all Contractors for the Block 5 Purchased Parking Spaces.

(5) To the extent set forth in the Drawings and Specifications, all utilities required for RTS Block 5's intended use of the Block 5 Purchased Parking Spaces for standard size vehicular parking spaces, as previously described, including, but not limited to, water, sewer, electricity telephone and natural gas, as applicable, shall be immediately available for such intended use, either within the Block 5 Garage, in public streets immediately adjacent thereto.

(6) The Public Parking Garage Condominium Unit and each of the Block 5 Purchased Parking Spaces shall not be in violation of Applicable Laws, including, but not limited to, all applicable municipal and governmental laws, ordinances and regulations relating to zoning, environmental matters and public safety matters.

(7) The Block 5 Purchased Parking Spaces shall be comprised of that number of standard size vehicular parking spaces as shall have been finally agreed upon by the City and RTS Block 5 pursuant to Section 1(a).

(8) The Block 5 Purchased Parking Spaces in their Completed state will have a currently available right by virtue of easements and/or rights-of-way established in the Condominium Documents to vehicular and pedestrian access (through the Public Parking Garage Condominium Unit) from and ingress and egress (through the Public Parking Garage Condominium Unit) to and across publicly dedicated streets, roadways and highways bordering the Public Parking Garage Condominium Unit .

(9) There shall be no action in any court against or affecting the Public Parking Garage Condominium Unit or the Block 5 Purchased Parking Spaces to which the City is a party.

(10) All covenants, representations and warranties of the City to RTS Block 5 contained in this Contract and any exhibits hereto shall be true and correct in all material respects on the Remaining Retainage Payment Date with the same force and effect as if such covenants, representations and warranties were made at and as of such time (subject to modifications thereto pursuant to Section 4(b)(1)); provided that the payment of the Remaining Retainage by RTS Block 5 as provided herein shall not be nor be deemed to be a waiver of other covenants, representations and warranties contained herein, which covenants, representations and warranties shall continue in full force and effect after the date on which RTS Block 5 pays the Retainage for the benefit of RTS Block 5 as provided herein, but subject to the limitations set forth herein.

b. Failed Conditions. In the event that any of the conditions set forth in Section 6(a) above are other than as stated, then RTS Block 5 shall have the right to withhold the payment of the Remaining Retainage until the failed condition is satisfied or waived in writing by RTS Block 5.

7. Casualty; Condemnation.

a. Casualty. In the event that prior to the Final Completion of the Block 5 Purchased Parking Spaces there shall be damage by fire or other casualty to the Block 5 Garage or all or any portion of the Block 5 Purchased Parking Spaces, the City shall be obligated to promptly and diligently repair and restore the Block 5 Garage or all or the affected portion of the Block 5 Purchased Parking Spaces provided that (i) the insurance proceeds from the City's builder's risk insurance policies that are required for the performance of such repair and restoration work are made available to the City; and (ii) RTS Block 5's first lien lender for Block 5 approves such repair and restoration work and agrees to permit the release of insurance proceeds from RTS Block 5's casualty insurance policies for the payment of the Purchase Price due hereunder, all subject to and in conformity with the terms of the loan documents between RTS Block 5 and such lender.

b. Condemnation. In the event that prior to the Final Completion of the Block 5 Purchased Parking Spaces (i) the Public Parking Garage Condominium Unit or any part thereof shall be acquired, by authority of any governmental agency or other authority in the exercise of its power of eminent domain or by private purchase in lieu thereof (a "Taking") or (ii) RTS Block 5 or the City shall have received any written notice that such a Taking is pending or threatened, and such Taking affects or will affect the ability of RTS Block 5 to occupy, use, access or enjoy the Block 5 Purchased Parking Spaces or any portion thereof, the City and RTS Block 5 will use commercially reasonable good faith efforts to mutually agree upon the manner in which they shall thereafter proceed under this Contract.

8. **Defaults.** In the event that either the City or RTS Block 5 shall fail to perform its obligations hereunder in accordance with the terms hereof and such default continues for more than _____(____) days after written notice from the non-defaulting party, the non-defaulting party hereto may avail itself of any legal or equitable rights which it may have at law or in equity with respect to this Contract; provided that, any action for damages initiated by (i) RTS Block 5 pursuant to this Contract in respect of a default by the City hereunder shall be limited to the actual and direct damages (specifically excluding consequential and punitive damages) suffered or incurred by RTS Block 5 as a result of such default by the City hereunder, not to exceed the amount of the Purchase Price; and (ii) the City pursuant to this Contract in respect of a default by RTS Block 5 hereunder shall be limited to the actual and direct damages (specifically excluding consequential and punitive damages) suffered or incurred by the City as a result of such default by RTS Block 5 hereunder, not to exceed the amount of the Purchase Price.

9. **Brokerage.** The City and RTS Block 5 each represent and warrant to the other that no agent, broker, or finder has acted for them in connection with this Contract. The City and RTS Block 5 each shall indemnify, defend and save the other harmless from and against any claims for brokerage, commission or finders fees resulting from a breach of the foregoing representations and warranties.

10. **Notices.** Any notice or communication under this Contract must be in writing and shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service, or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed:

If to RTS Block 5:

RTS Residential Block 5, LLC
c/o S.J. Ross Associates, Inc.
Attention: Mr. Scott J. Ross
Suite 350
7910 Woodmont Avenue
Bethesda, Maryland 20814

and

RTS Residential Block 5, LLC
c/o DANAC Corporation
Attention: Mr. John F. Jaeger, Jr.
Suite 1120
7501 Wisconsin Avenue
Bethesda, MD 20814

with a concurrent copy to:

Pamela V. Rothenberg, Esquire
Womble Carlyle Sandridge & Rice, PLLC
7th Floor
1401 Eye Street, N.W.
Washington, D.C. 20005

If to the City:

City of Rockville
Attention: Mr. Arthur D. Chambers
111 Maryland Avenue
Rockville, Maryland 20850

with a concurrent copy to:

Paul T. Glasgow, Esquire
Venable LLP
Fifth Floor
One Church Street
Rockville, Maryland 20850

11. Miscellaneous Provisions. Each of the Recitals set forth in this Contract is incorporated herein to the same extent as if it had been stated herein in full. Each of the exhibits attached to this Contract is incorporated herein by reference. This Contract contains the entire agreement between the parties hereto and is intended to be an integration of all prior or contemporaneous agreements, conditions or undertakings between the parties hereto; there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied between and among the parties hereto other than as herein set forth. No change or modification of this Contract shall be valid unless the same is in writing and signed by RTS Block 5 and the City. No purported or alleged waiver of any of the provisions of this Contract shall be valid or effective unless in writing, signed by the party against whom it is sought to be enforced. This Contract and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, legal representatives, successors and assigns. All of the provisions hereof shall survive the City's delivery of the Occupancy Permit for the Survival Period. This Contract shall be governed by and construed in accordance with the laws of the State of Maryland. In the event that this Contract shall conflict with the Restated GDA, this Contract shall govern and control. This Contract may be executed in multiple) counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, and intending to be legally bound, the undersigned parties have duly executed this Contract of Sale as their free act and deed for the uses and purposes herein contained on the dates indicated below their respective signatures.

RTS BLOCK 5:

RTS RESIDENTIAL BLOCK 5, LLC,
A Delaware Limited Liability Company

By: RTS-RD Rockville Investments II, LLC,
A Delaware Limited Liability Company,
Sole Member and Manager

By: RTS-RD Rockville Management II, LLC,
A Delaware Limited Liability Company,
Manager

By: RTS-RD Rockville, LLC,
A Delaware Limited Liability Company,
Sole Member and Manager

By: RD Rockville, LLC,
A Maryland Limited Liability Company,
Sole Member and Manager

By: RD Maryland Avenue Limited
Partnership,
A Maryland Limited Partnership,
Sole Member and Manager

By: RD Commerce Street, LLC,
A Maryland Limited Liability
Company, General Partner

By: S.J. Ross Associates,
Inc., A Maryland
Corporation,
Its Manager

By: _____
Scott J. Ross,
President

(SIGNATURE PAGE CONTINUES)

THE CITY:

WITNESS:

MAYOR AND COUNCIL OF ROCKVILLE

By: _____

Scott Ullery,
City Manager

List of Exhibits:

Exhibit A - Block 5 Purchased Parking Spaces Plat
Exhibit B – Schedule for Payment of Purchase Price

EXHIBIT A

Block 5 Purchased Parking Spaces Plat